

JS 44 (Rev. 06/17)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Francis Gooding

DEFENDANTS

New Jersey Transit Rail Operations, Inc.

(b) County of Residence of First Listed Plaintiff

(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Matthew C. Gaughan, Esquire; Daniel C. Levin, Esquire
Levin Sedran & Berman; 510 Walnut St. Ste. 500
Philadelphia, PA 19106

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|---------------------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input checked="" type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input checked="" type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

45 USC Sec 51-60

Brief description of cause:

Plaintiff has injuries as a result of unsafe workplace

VII. REQUESTED IN COMPLAINT:

- ☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.
- DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

FRANCIS GOODING
240 Van Norstrend Avenue
Jersey City, NJ 07305,

Plaintiff

vs.

NEW JERSEY TRANSIT RAIL OPERATIONS,
INC.
One Penn Plaza East
Newark, NJ 07105,

Defendant.

:
:
:
:
:
:
:
:
:
:
:
:
:
:
:

NO:

JURY TRIAL DEMANDED
TWELVE JURORS REQUESTED

COMPLAINT

I. PARTIES

1. The Plaintiff, Francis Gooding, is a competent adult individual whose address is 240 Van Nostrand Avenue, Jersey City, NJ 07305.

2. The Defendant, New Jersey Transit Rail Operations, Inc. (referred to as “NJT” or “Defendant”), is a corporation organized and existing under the laws of the State of New Jersey, whose principal place of business and address for service of process is One Penn Plaza East, Newark, New Jersey 07105.

3. This suit is brought pursuant to Acts of Congress known as the Federal Employers' Liability Act, Title 45 U.S.C. Secs. 51-60.

II. JURISDICTION

4. At all times material hereto, the Defendant was engaged in interstate commerce as common carrier by railroad operating a line and system of railroads in the Commonwealth of Pennsylvania, and other states of the United States.

5. At all times material herein, Defendant was a railroad company operating a system of railroads in the Pennsylvania and through the District of New Jersey wherein this action is filed.

6. At all times material herein, Defendant was a common carrier engaged in the interstate commerce, and that plaintiff was employed by the defendant. Plaintiff was also engaged in interstate commerce.

7. Jurisdiction of this Court is based upon title 45, U.S.C. § 51 et seq., commonly known as the Federal Employees Liability Act.

III. FACTS

Count I **FELA**

8. At the time and place hereinafter mentioned, the acts of omission and commission causing injuries to the Plaintiff were done by the Defendant, its agents, servants, workmen and/or employees acting in the course and scope of their employment with and under the direct and exclusive control of the Defendant.

9. At the time and place hereinafter mentioned, the Plaintiff was employed by Defendant railroad as a carman and was acting in the scope of his employment by the Defendant and was engaged in the furtherance of interstate commerce within the meaning of said Act.

10. During Plaintiff's entire working career for NJT which includes October 31, 1996 through the present, while working within the scope of his employment in various locations throughout Defendant's railroad system at MMC/SSI in Kearney, New Jersey, Plaintiff was injured due to unsafe and inadequate working conditions. Plaintiff was employed at MMC and S&I Kearney, New Jersey.

11. This injury was caused in whole or in part by the negligence, carelessness and recklessness of the Defendant and its agents, servants, workmen and/or employees, acting within the scope of their employment, which negligence consisted of the following:

levels/amounts of repetitive cumulative trauma and vibration produced by the work duties/tasks which the Plaintiff was required to perform for the Defendant;

- m) failing to solicit information as to the quantity and type of traumas suffered by the work force and then advising the plaintiff and other workers of the results of that accumulation of information; and,
- n) failing to provide the Plaintiff with protective equipment designed to protect him from repetitive cumulative trauma injuries as a result of exposure to repetitive occupational trauma and vibration.

12. Plaintiff is a carman and is required to lift heavy pipe wrenches, air hammers, air guns overhead to get to air brakes during his employment. While repairing cars, Plaintiff is required to utilize heavy bolts and hold them to get it in place. Thus, Plaintiff's job duties require a lot of reaching in overhead spaces blindly and, using equipment. Plaintiff is required to use ladders which require awkward body positions. He has a lot of reaching across his body with tools to complete the job.

13. Defendant failed to provide a safe and reasonable environment where Plaintiff was not required to use heavy objects overhead in awkward positions. Defendant should have provided a workspace that required less stress on the shoulder and the assistance of other employees.

14. On March 31, 2014, Plaintiff was diagnosed with left tendon and labrum and right and left shoulder tendon tear. Plaintiff has had surgery on his right and left shoulder.

15. As a direct result of the Defendant's negligence, through their agents, servants, workmen and/or employees, the Plaintiff suffered a left shoulder rotator cuff tear with impingement syndrome with left shoulder labral tear & right shoulder rotator cuff tear, labral tear, biceps tendon tear and

impingement.

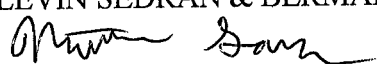
16. As a direct result of the Defendant's negligence, through its agents, servants, workmen and/or employees, the Plaintiff has been unable to attend to his usual duties and occupations, all of which caused substantial financial loss and all of which may and probably will continue in the future.

17. As a direct result of the Defendant's negligence, through its agents, servants, workmen and/or employees, the Plaintiff has been and may continue to be required to receive and undergo medical treatment and medical care, including a left shoulder arthroscopy with arthroscopic cuff repair, arthroscopic debridement and acromioplasty and a right shoulder rotator cuff tear, labral tear, biceps tendon tear and impingement which required right shoulder arthroscopy with arthroscopic cuff repair, labral repair, biceps tenotomy and acromioplasty and has incurred reasonable and necessary medical expenses, all of which may and probably will continue in the future.

18. As a direct result of the Defendant's negligence, through its agents, servants, workmen and/or employees, the Plaintiff has sustained pain, suffering, inconvenience, stress and a loss of enjoyment of life and may continue to suffer same for an indefinite period of time in the future.

WHEREFORE, the Plaintiff demands judgment against the Defendants in an amount in excess of FIFTY THOUSAND DOLLARS, (\$50,000.00).

Date: 6/13/17

LEVIN SEDRAN & BERMAN
BY: 
MATTHEW C. GAUGHAN, ESQUIRE
DANIEL C. LEVIN, ESQUIRE
510 Walnut Street, Suite 500
Philadelphia, PA 19102
(215) 592-1500

RAYMOND P. FORCENO, ESQUIRE
THE FORCENO LAW FIRM, P.C.
510 Walnut Street, Suite 515
Philadelphia, PA 19106
(215) 732-1630

Counsel for Plaintiff